



BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board
Pete T. Cenarrusa, Secretary of State
Alan G. Lance, Attorney General
J. D. Williams, State Controller
Marilyn Howard, Superintendent of Public Instruction

Winston A Wiggins, Secretary to the Board

Final Minutes Regular Land Board Meeting July 9, 2002

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, July 9, 2002 in Boise, Idaho. The meeting began at 9:00 a.m. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Pete T. Cenarrusa
Honorable Attorney General Alan G. Lance
Honorable Controller J. D. Williams
Honorable Superintendent of Public Instruction Marilyn Howard

Secretary to the Board Winston A Wiggins

• **CONSENT AGENDA**

Director Wiggins provided background information on the Consent Agenda items.

A motion was made by Attorney General Lance to approve the Consent Agenda in its entirety. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 5-0.

1. Director's Report – approved

- A. Interest Rate on Departmental Transactions – June 2002
- B. Bureau of Surface and Mineral Resources, Minerals Section, Official Transactions – May 2002
- C. Bureau of Real Estate, Land Sale Section, Official Transactions – June 2002
- D. Bureau of Real Estate, Easement Section, Official Transactions – June 2002
- E. Bureau of Surface and Mineral Resources, Range Management and Surface Leasing Section, Official Transactions – June 2002
- F. Timber Sale Official Transactions – May 30, 2002 through June 20, 2002
- G. Timber Sale Activity Report

TIMBER SALE ACTIVITY REPORT DISCUSSION: Controller Williams asked if any analyses have been completed to show how this report affects projections of income and cash flows. Information is more critical now due to the stock market situation. Timber money basically funds the endowment program. Director Wiggins responded that the 2003 projection has not changed. Figures are still on track. The department has been receiving good stumpage rates at the bid table.

H. Fire Report

FIRE UPDATE: Director Wiggins stated that to date fires have not been bad for state jurisdiction. A number of IDL staff has responded to pleas for help in other states. As of

July 4, 2002, IDL had approximately 80 employees out of state, primarily in Colorado and Arizona. As of this date about half of those employees have returned to Idaho. The number of acres the department has actually dealt with, and the number of fires on state jurisdiction, has been low compared to a year ago. Expenditures to date have been fairly minimal on state jurisdiction. The southern part of Idaho has a fairly high fire potential for the year. The northern part of the state, from Grangeville north, is very green.

Director Wiggins provided a brief summary of how the department pays for fires. The preparedness part of the fire program, which is having resources in place and ready to respond, is paid through a combination of assessments on forest landowners and the general fund. The department tries to maintain about a 50-50 mix. Once a fire call comes in, and the department sends someone out on a suppression assignment, the department goes onto the deficiency warrants. All suppression activities are paid from the general fund.

For planning purposes, Director Wiggins advised he would keep the board, the Division of Financial Management and Legislative Services staff updated throughout the year. When department employees go out of state, or to another jurisdiction in the state, the receiving agency pays. At the end of the year, the bills are totaled. The department, for instance, will send Arizona a bill. If Arizona sends people to Idaho to fight fires, the bills are then balanced and Arizona is sent a bill for the difference. The general fund is not impacted in any way by people going out of state to fight fire. It will, however, be seriously impacted if we bring people in from outside of Idaho to fight fires here.

DISCUSSION: Attorney General Lance asked if Idaho state workers sent to Arizona are paid at the same Idaho pay rate when they are working in Arizona. Director Wiggins responded that those employees remain State of Idaho employees and are actually paid by the State of Idaho. They retain the same benefits, pay rates, etc. Adjustments are made at the end of the year when Idaho bills the other state for reimbursement.

Attorney General Lance asked who covers the Idaho employees under Workman's Comp when those Idaho employees are working in another state. Director Wiggins stated he did not know the answer but would find out.

Secretary of State Cenarrusa stated he has been reading more and more that people are learning, and agencies are learning, that the practices carried on by the board and the Department of Lands are working to help keep fires down. There is a need to harvest the forest and the dead trees. Thick dry underbrush fuels the fire so hot that it can not be stopped. He believes the department's practices are good, and he feels the move the board has made through the Federal Lands Task Force is a good move.

Governor Kempthorne commented that if you ask firefighters what can be done to make their job safer, the number one response is not equipment or training. It is reducing the fuel load. Director Wiggins stated that the National Fire Plan and the comprehensive agreement go a long way toward encouraging active management on federal and private land, as well as on state land, in an effort to reduce fuel loads and the risk of fire. The way to reduce the risk of fire is to reduce the fuel and lower the intensity. It is not the fire itself but the intensity of the fire that poses the greatest threat.

2. Timber Sales – Staffed by Bob Helmer, Chief, Bureau of Forest Management – approved

A. Junta Poles CR-1-0325 530 MBF / 85,625 LF

JUNTA POLES BACKGROUND INFORMATION: Director Wiggins stated this is a timber sale at Priest Lake. In light of concerns about endangered species at Priest Lake, this is a light harvest. There are no fish-bearing streams on the sale area. It is outside both the grizzly and the caribou habitat zones. The nearest Class I, or fish-bearing stream, has no

endangered species, although it does ultimately drain into a bull trout stream. Director Wiggins added that essentially every stream at Priest Lake does in fact drain into bull trout habitat at some point.

B. Lower Waffle	CR-1-0328	3,500 MBF
C. Rodent Ridge	CR-3-0486	2,865 MBF
D. Big Eddy	CR-3-0488	4,980 MBF
E. Cedar Garden	CR-4-0713	2,335 MBF
F. South Democrat	CR-4-0732	2,025 MBF
G. Corp Shoulder	CR-4-0742	3,355 MBF
H. Ten	CR-5-0100	2,568 MBF

3. Recommendations of the Forest Practices Act Advisory Committee (FPAAC) for Amendments to Forest Practice Act Administrative Rules – Staffed by Ron Litz, Assistant Director, Forestry and Fire – approved

DEPARTMENT RECOMMENDATION: That the board approve entering the Administrative Procedures Act rule making process.

BOARD ACTION: Approved.

4. Request for Approval to Participate as a Member of the Clearwater-Potlatch Timber Protective Association and the Southern Idaho Timber Protective Association – Staffed by Ron Litz, Assistant Director, Forestry and Fire – approved

DEPARTMENT RECOMMENDATION: That the state continue to participate as a member of the Clearwater-Potlatch Timber Protective Association and the Southern Idaho Timber Protective Association.

BOARD ACTION: Approved.

5. Authorization for Issuance of Deficiency Warrants to Pay Fire Suppression Costs in Fiscal Year 2003 – Staffed by Ron Litz, Assistant Director, Forestry and Fire – approved

DEPARTMENT RECOMMENDATION: That the board authorize the department to issue deficiency warrants necessary to pay the fire suppression costs beyond the \$124,000 appropriation for Fiscal Year 2003.

BOARD ACTION: Approved.

6. Request Approval to Add a Payette Lake Cottage Site Lessee to the Exchange List – Staffed by Perry Whittaker, Chief, Bureau of Real Estate – approved

DEPARTMENT RECOMMENDATION: That the board approve the addition of Willard R. Leisy to the Payette Non-Lakefront Cottage Site Exchange List.

BOARD ACTION: Approved.

7. Approval of Minutes – Regular Meeting – June 11, 2002 – approved

- **REGULAR AGENDA**

8. Endowment Fund Quarterly Report – *Presented by Bob Maynard, Citizens' Evaluation Committee*

Robert Maynard, Chief Investment Officer, PERSI, provided a quarterly report on the Endowment Fund.

Mr. Maynard. Overall the endowment is flat for the year, which, given the state of the equity markets, shows the benefits of diversification between timber equities and fixed income. Timber is doing well in terms of coming through with projected revenues. On the other hand, that relatively good performance masks a couple of underlying weaknesses.

This has been one of the worst equity markets in the last hundred years and the third worst since the great depression. When looking at the relative returns between bonds and equities, it has been the second worst since the 1850s. In that environment going forward you will see clearly on the fixed income that it has been a good run as interest rates have come to near historic lows. However, that masks a great deal of problematic return.

Obviously right now, with the bond interest rates at six percent and the fed funds rate at near historic lows, the returns from fixed income over the next ten years are problematic and may be low. If interest rates rise, you will get a 5-6% yield and then the price will go down so you will get less than that going forward, if interest rates rise from here. Fixed income, as investment opportunity going forward, has limited potential benefit.

The equity market is struggling and it may struggle in the future. When looking at the equity market, remember that there are periods of time when the state of the economy does not directly link to the state of the equity market. This is one of those times. The economy has not been bad. Consumer spending is relatively healthy. If a recession did occur, it was the mildest recession in history. As a result, the prospects for the economy booming from here are relatively small.

The equity market reacts to profits. In particular, it reacts to three things: (1) the current state of profits; (2) the expected growth rate of profits over the next five to ten years; (3) the risk or uncertainty in the state of the growth of those profits. The state of current earnings is poor. Of the three factors, that is the one that actually drives prices the least. The other two are in bad shape and are unlikely to turn around quickly. The other two are "what is the expected growth rate of profit." The biggest problem is that the growth rate of profits seen in the late 1990s was based upon a view of the central nature of tech and telecom driving huge growth and profits for corporations – lower efficiencies, bigger markets, etc. That has been pretty much wiped out. Tech and telecom are seen to be flat. In fact some of the big corporations are going under, World Com, etc. You will not see robust optimism about the huge rate and the growth of profits over the next five to ten years that you saw three or four years ago. That portion, if it comes back, will come back slowly and it is going to be kind of a "show me" sort of attitude on the part of the markets. Third is "what is the risk to people's expectations about the growth rate of those profits." With the current scandals, *i.e.*, the accounting scandals, etc., it will not bounce back quickly.

On the three elements that really drive the stock market, two of them, if they come back, will come back slowly. One may come back relatively quickly. What does that mean? If the equity market comes back it is likely it may have a bounce back briefly but, in the longer term, prospects are more for slow growth instead of the 20% to 30% years seen in the late 1990s. As a result, what you are seeing is pretty much the same story that you have seen for the last year and a half, and particularly since the September 11th or 12th lows.

The total trust for the fiscal year to date is only down 30 basis points. Nonetheless, you have a problem in the financial assets and very good returns from the Lands assets. When looking at

the total lands rate of return for the year, it is a positive 16.1% when it could have been about a 7% return. The return is high because there is an expected drop in revenue. Most of the 16% is the current revenue based on a relatively low value. It is expected that timber revenue will go down in the future and the returns will go down more toward the 7 or 8% level, if you use a 6% discount rate, and to more of a 5 to 6% level, if you use a 4% discount rate. Using custodian evaluations on preliminary returns for the endowment fund trust itself, returns will change by a negative 11.7%. That is bad relative to what you should have expected from the markets.

The bigger problem is the equity portion. Returns should have met benchmarks of 9.3 and if all of the managers had hit their benchmarks you would have had a negative 7.6. Active managers are usually expected to outperform their indices in down markets so around negative 7.0 should have been expected.

On the endowment fund asset allocation, financial assets are now 65% equities and 35% fixed income. The normal allocation is 70% equities and 30% fixed income so they are over allocated to fixed income. One of the issues that the EFIB will have to decide is if and when to rebalance. Normally they rebalance in November. The question is whether they want to rebalance earlier and that will be an issue they will no doubt be addressing.

The final thing to worry about is your ability to pay the projected payout to the beneficiaries. You will have sufficient funds at the current projections to keep the payouts at current levels through fiscal year 2004. The impact of the bad markets is on the potential makeup of unrealized losses.

The cumulative school loss at the start of the year was \$38 million. The cumulative pool loss was \$17.7 million. At the end of fiscal year 2002 you could see an increase to \$115 million for the school portion and \$52.9 million for the pooled portion. That is the impact of the last year of stock market losses.

The Fund started with a beginning value of \$801 million. Distributions to beneficiaries, minus new money coming in, left a net outflow of \$26 million and an investment gain/loss of \$92 million for a current market value for the endowment of \$683 million. If you had simply been indexed 70% U.S. equities and 30% U.S. fixed income, you would have had a negative 9.3% return. If all of the managers had hit their benchmarks, you would have had a negative 7.3% return. This incorporates the biases inside the allocation of equity assets. But that bias did not hurt you last year and may have, in fact, actually helped to make your returns better. It was simply the fact that equity managers underperformed.

The combined impact of the managers was poor. Your large cap growth underperformed significantly for the year and for the quarter to date. Large cap value underperformed by 4.7%. Mid-cap growth underperformed. The only good news was small cap managers did all right and the international manager did very well. The real damage came from the large cap managers and the mid-cap managers. The suspicion is that it is a classic problem of hiring managers. It is a misnomer to think that all growth managers and all value managers have similar styles. There are wide differences between types of growth managers just as there are wide differences between types of value managers.

DISCUSSION: Controller Williams asked Mr. Maynard what he would do about rebalancing to get from 65/35 to 70/30. Mr. Maynard responded that right now the fund has about \$10 million in cash that was handled by Capitol Investment Advisors. The first thing to do would be to take that cash and put it either in the index funds or give it to international. Then consider taking some fixed income and moving it over. Although this is not something Mr. Maynard feels is an emergency, he feels it is something that should be looked at over the next month – first cash and then fixed income.

The discipline of rebalancing is a matter of some controversy as to when to rebalance and when to let it run. Rebalancing should be done at least once per year. Some people think you should

do it every day by using options markets. As long as you are between those two extremes, you are not out of line. The EFIB should look at that issue and come up with a policy.

Controller Williams asked if there would be a time that the board should look at the fund managers and their styles. As mentioned earlier, the various fund management firms and their styles would have been successful in the 1990s. However, it appears now there will be questions as to whether that same model will work over the next five or ten years. Mr. Maynard responded that the general feeling is the recovery will continue at a moderate pace. Inflation will stay under control. Tech and telecom will not drive the recovery. It will be a fundamentally different market. Emerging markets will be strong. Japan will be weak. Europe will be moderate. Generally, over the long term, international will probably outperform because of a U.S. dollar weakness against foreign currencies. Federal policy is expected to be benign. Corporate spreads will narrow and U.S. productivity will continue.

Controller Williams asked Mr. Maynard what he would do to analyze the managers and to make decisions. He asked if this is the model the board should use and how long should the process take. Mr. Maynard responded that this is a decade-long process. He suggested that the board take its time, however, meaning months, not weeks and not years. The problems could be worked out in six months. Mr. Maynard stated the major fear he has with investments is people shooting behind the target. By that, he means things being changed because they do not like their own policy. The biggest issue is everybody understanding clearly when they make a decision what the risks are and what the potential opportunities are and not changing simply because there was an unexpected result when it should have been expected.

Part of the problem may not be the types of managers but that there are too many managers. It is a question of how much does everybody understand about what is going forward and agree as to what they are getting into. And if that agreement is not there, you have problems. If that agreement is there, then you have the staying power to keep with an investment policy for a long period of time. The only time a long-term investment policy fails is when everybody keeps shifting back and forth. This is a common problem. The issue is understanding, communicating and clearly stepping up and saying we understand it, we see it and we are comfortable with it and it is transparent to us. We can see what is going on. If you can not see what is going on, everybody has doubts. Then you have misunderstandings.

Secretary of State Cenarrusa asked if the falling dollar is having an effect on agricultural markets. Mr. Maynard responded the problem with the falling dollar is that the bad part hits first and the good part hits later. The bad part that hits first is import prices go up quickly and the longer term benefit is that goods become more competitive. But that takes a while to come around. It will have a moderate weakness going forward. One of the dangers we are foreseeing is moderate weakness of the dollar is not bad. A collapse of the dollar is very bad.

Governor Kempthorne commented that Mr. Maynard mentioned the four-year threshold. That probably has pluses and minuses because as we look at this, and you look at the large cap investors, you may say we need to be more conservative in this market. But if you have a four-year clock ticking, and you have so much to make up, would that not dictate that you must remain perhaps very aggressive? Mr. Maynard responded that if you take that total amount of \$160 million on a base asset of \$700 million, which is about 25%, you have four years for the market to go up 20%, roughly. That is not an unreasonable bet at today's levels. The indication is that over the next ten years the market is priced to give the normal 9-10% return, which is the normal 7% after inflation. If you look at the past ten years, even after the big run up and down, that is about what we received in the last ten years. But over a four-year period of time, 20% cumulative – 25% cumulative on price return is about 7-8% per year or less – 5 to 6% per year – that is a reasonable bet but not a certainty.

Governor Kempthorne observed that the economy is doing relatively well, but 9-11 caused the market to fall. Add to that the accounting scandals and recovery becomes complicated. Then

when you have an administration that warns us to fully expect further terrorist attacks, another 9-11, is it fair to say the market is quite fragile? Mr. Maynard agreed that the market is reasonably fragile. If the U.S. consumer stops spending, either because of terrorist attacks or for whatever reason, that is one big problem.

Governor Kempthorne asked Mr. Maynard if he still believes it is worth being in the equity market when the beneficiaries are as important as schools. Mr. Maynard stated yes and the reason is you just went through one of the worst situations (returns of the total trust). You are just flat. You have not lost money. And that is as bad as it is going to get. One of the reasons that this endowment as a whole was put under the Land Board was so that the board could look at all of the investments put together, not just individual investments. One of the reasons why equities are a good idea is that it is offset by half of your assets being in timber. Even in the worst time you still have two years of safety with regard to payout. You have increased the payout to the beneficiaries over the last three years plus you have taken the expenses of about \$18 million off the general budget. These numbers are after paying all of the expenses. You may have to make some minor adjustments. Going forward timber revenue is dropping. You have fixed income markets looking problematic. At best you can expect 6-7% returns and that is if interest rates do not rise. If interest rates rise that number drops. A 6-7% nominal return does not make it in the longer term given the expected payout. Plus equity markets have at least dropped back to reasonable levels.

There is an old investment saying that there are three ways to invest – one is physically exhausting; one is mentally exhausting; one is emotionally exhausting. Physically exhausting is working harder than everybody else. There are hundreds of thousands of people working 24-hours a day. The physically exhausting way is that it is hard to work harder than anyone else. Mentally exhausting – you must be smarter than everybody else. There are a lot of smart people. You hired some of them. I hired some of them. They probably cancelled each other out. The third way is the emotionally exhausting way. Long term policy – stick to it through thick and thin. And that is the way you see almost all of this and that is the way you have taken it. That is your issue now. This is the emotionally exhausting way.

No action was taken on this agenda item.

- 9. Lane Weimer Request for Unconditional Access Across State Endowment Land – Adoption Of Final Order Based Upon Hearing Officer's Recommended Order –**
Presented by Steve Schuster, Deputy Attorney General, Jay Biladeau, Assistant Director, Lands, Minerals, Range and Robert McKnight, Supervisor, Clearwater Area Office, IDL

AUDIENCE WITH THE BOARD

Mr. Lane Weimer was granted an audience with the board.

Mr. Weimer. Mr. Weimer requested that the State Board of Land Commissioners provide him with unobstructed access across state endowment land. He believes the state has blocked access to his private property. He objects to the Department of Lands requirement that he obtain a permit to cross state endowment land, and he objects to any conditions on his use and maintenance of the right-of-way.

A verbatim transcript of Mr. Weimer's audience with the board is available upon written request.

DEPARTMENT RECOMMENDATION: The Department recommends that the Land Board adopt the Hearing Officer's *Recommended Order* as the *Final Order*. In short, the Department recommends that the Board (1) deny Claimant Weimer's request that the Board recognize an unconditional easement for access to his property under R.S. 2477 or under Idaho Code § 40-

107 and § 40-204A; and (2) deny Claimant Weimer's request that the Land Board recognize an unconditional easement for access to his property under the doctrine of implied easement.

DISCUSSION: Secretary of State Cenarrusa asked Mr. Weimer if he has any access into or out of his property if the gate is locked. Mr. Weimer responded that he has a key to the gate unless the state lock is locked in such a way that he can not get out. Mr. Weimer stated there is no other access except across state land. He believes he is landlocked by the Department of Lands.

Secretary of State Cenarrusa asked if the land was reserved for any other purpose prior to Mr. Weimer's ownership or is it an RS2477 road. Mr. Weimer responded that the state claims the Forest Service said the North Fork Trail was not verified RS2477. However, he believes the Forest Service never stated that conclusion.

Secretary of State Cenarrusa asked the Department of Lands legal counsel, Steve Schuster, if the road was established as an RS2477 road if it was used prior to any reservation. Mr. Schuster responded there is no evidence to support a finding of an RS2477 road and that it is important to point out that the access used by the Weimers is not the road that formerly went up the North Fork of the Clearwater River.

Governor Kempthorne asked Mr. McKnight about the gate and the location of the gate. Mr. McKnight stated that the lock and the gate location were established in a coop agreement between Potlatch Corporation, Fish and Game and the Department of Lands in 1993. The purpose of the lock and the gate is to protect water quality and wildlife in a fairly large block called the John Lewis block. The state and Potlatch are the major landowners. Mr. McKnight stated that if the gate is moved, it would be more difficult for the department to manage the land.

Mr. McKnight went on to say that keys are provided to landowners who have an agreement. Mrs. Weimer was offered a state key but she refused to sign a receipt for the state property. Mrs. Weimer stated she feels she was refused a key. She refused to sign because she was required to sign permits and she refuses to sign a permit. By signing for the key she feels she would also be agreeing to the department's restrictions and regulations and she refused to be subject to the terms and conditions of the permit.

Governor Kempthorne asked if the objective of the gate is to keep public access down because of the sensitive nature of the area. Mr. McKnight stated that is correct. The objective is to keep hunter access down. The area is still accessible by four-wheelers.

Controller Williams stated it appear that most of the access before Dworshak, if not all of the access, was by the river, which is now flooded. In 1973, Mr. Weimer's predecessor in title applied for an access permit from the state. Mr. Weimer stated the only time his predecessor applied for a permit was to construct a road across state endowment land.

Controller Williams asked Mr. Weimer if his predecessor ever received any severance damages from the Corps of Engineers when Dworshak Dam was flooded and access to his property was taken away. Mr. Weimer stated his predecessor did not receive any severance damages.

Controller Williams stated that there is a tremendous amount of factual issues and because of that, a contested hearing was requested. Controller Williams suggested that Mr. Weimer has the option of appealing to District Court. Mr. Weimer stated he does not have the funding to pursue that option.

Governor Kempthorne commented he is unsure if the board can make a determination at this time. What he is hearing is a very frustrated couple. Mrs. Weimer stated she wants the gate moved. Governor Kempthorne asked if the gate could be moved while allowing the sensitive nature of the area to still be protected. He asked if there might be a simple solution instead of a legal solution. Mrs. Weimer then asked Mr. McKnight why the gate can not be moved. Mr. McKnight stated that the department consulted with Fish and Game and Potlatch and it was

decided that the protection of the sensitive area would not be as effective if the gate was moved. Mr. and Mrs. Weimer are being accommodated by the state offering them a key, if they will sign a receipt for the state key. They can then put their lock on the other side and they can have access whenever they want.

Governor Kempthorne asked Mrs. Weimer if it would be of any help if she did not have to sign for the state key. Mrs. Weimer stated if she did receive a key she would make copies for all of her guests. She asked if she gives out keys to a hundred guests, what good is it to have a key. Mrs. Weimer stated, "So what good is the gate if I got five hundred keys passed out to anybody I want. The gate is no good any more if they give me a key from the Department of Lands because I will give it to everybody I know."

Mr. McKnight explained that the gate has a double lock system. The gate has a state lock and a lock from the Weimers. The state would prefer that Mrs. Weimer not duplicate the state key. However, she can make copies of her own key. The Weimers would be responsible for all of the people coming and going using their key. If the right is abused, then the Weimer right-of-way could be jeopardized.

Mr. Wiggins added that Mrs. Weimer was asked to sign a receipt for state property, which is standard procedure. The department is not denying the Weimers a key but the state key should not be duplicated. The purpose of giving the Weimers a state key is should the state lock be inadvertently locked, the Weimers could use the state key to unlock the gate and gain access. Mr. and Mrs. Weimer complained that the state has allowed numerous people to camp in the area. Campers access the area by going around the gate on four-wheelers.

Controller Williams stated he was raised in cattle country and is very familiar with locked gates. He stated there was always a key somewhere so you could get through the gate. He does not believe it is unreasonable to ask the Weimers to unlock a gate. The department is asking that the Weimers get a key and a permit and they will have access to their property. Mr. Weimer stated he feels that is an unreasonable restriction because if he does anything contrary to the permit he signs, he can be locked out of his property. He feels it is unfair that the loggers and other personnel do not have to have a permit to access the property.

Attorney General Lance asked Mr. Weimer what the title insurance company told him about access when he acquired the property in 1993. Mr. Weimer believes that a title search was run but the search did not indicate any information about access. The search only specified there was a clear title. Attorney General Lance asked for a copy of the title search and Mr. Weimer responded that he did not have a copy of the report with him. Attorney General Lance asked Mr. Weimer if he would attempt to obtain a copy of the title search. Mr. Weimer responded that he would look for it.

Attorney General Lance stated that legally he does not believe the Weimers have a strong case. However, the Land Board and the State of Idaho would like to be good neighbors. Mr. Weimer's predecessor had six years to file a lawsuit for compensation but he chose not to do so. The claim that there is an existing 2477 road can not be supported by available evidence. In trying to be good neighbors, the Land Board and the Department of Lands has an obligation to make sure there are reasonable restrictions in terms of access, keys and so forth. There has to be reason prevailing on both sides. A copy of the title search from 1993, not the present, would be of value to the members of the board and their staff.

Attorney General Lance suggested that documents not presented to the Hearing Officer, such as the title search conducted in 1993, may be important in terms of the overall evaluation by the board. He requested that those documents be provided to the board by December 2002 and that this item could be put on the December 2002 board meeting agenda. Mr. and Mrs. Weimer objected to the December date due to weather conditions. Controller Williams suggested that October 2002 might be a better option.

Governor Kempthorne requested that Director Wiggins work with the Weimers to get the necessary information and that Mr. McKnight, Fish and Game and Potlatch meet to take another look at the location of the gate and other possible options for the gate location.

Director Wiggins stated this item would be targeted for no later than the November Land Board meeting. If possible, an attempt would be made to put this on the October Land Board agenda. He stated any additional information would have to be provided by the first week in September. Director Wiggins stated in the meantime the Weimers will continue to have access to their property over state land.

In closing, Mr. Weimer asked the board two questions. Are state endowment lands public lands? Does the public have a right to be on state endowment land? Secretary of State Cenarrusa responded on behalf of the board. Public lands are public domain and those lands now reside with the Bureau of Land Management. Even Forest Service land is not public domain. Forest Service land was appropriated for the purpose of the Forest Service. Those lands were taken out of public land. The state land came out of the public domain lands that belonged to the United State of America. Endowment lands were granted to the state for certain purposes so they were taken out of the public lands and the lands were put into another category, which is called endowment lands. There are nine institutions that benefit from state endowment lands. Essentially, state lands are not public lands. To Mr. Weimer's second question, Director Wiggins added the public is allowed the use of state land. People hunt, recreate and traverse state land. The department does not typically keep people off of state property unless there is some health and safety reason. It is a use, not a right.

BOARD ACTION: This agenda item was deferred pending receipt of additional information. No action was taken.

- **INFORMATION AGENDA**

Director Wiggins briefed the board on the Information Agenda item. No Land Board action is required on the Information Agenda.

10. Land Exchange Status Report

- A motion was made by Attorney General Lance to resolve into Executive Session at 11:03 a.m. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 5-0.

- **EXECUTIVE SESSION**

A. To Consider and Advise Its Legal Representatives in Pending Litigation or Where There is a General Public Awareness of Probable Litigation [Idaho Code § 67-2345(1)(f)]

B. To Consider Personnel Matters [Idaho Code § 67-2345(1)(b)]

- A motion was made by Attorney General Lance to resolve into Regular Session at 11:40 a.m. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 5-0. No actions were taken by the board during the Executive Session.

There being no further business to come before the board, the meeting adjourned at 11:40 a.m.

IDAHO STATE BOARD OF LAND COMMISSIONERS

/s/ Dirk Kempthorne

President, State Board of Land Commissioners and
Governor of the State of Idaho

/s/ Pete T. Cenarrusa

Pete T. Cenarrusa
Secretary of State

/s/ Winston A Wiggins

Winston A Wiggins
Director

The above-listed final minutes were approved by the State Board of Land Commissioners at the August 20, 2002 regular meeting.